CONSTITUTIONAL PROVISIONS:

The Fourteenth Amendment to the United States Constitution provides in relevant part:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CURRENT ORS 109.119 (2001 EDITION):

109.119 Rights of person who establishes emotional ties creating child-parent relationship or ongoing personal relationship; presumption regarding legal parent; motion for intervention. (1) Except as otherwise provided in subsection (9) of this section, any person, including but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage, who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child may petition or file a motion for intervention with the court having jurisdiction over the custody, placement or guardianship of that child, or if no such proceedings are pending, may petition the court for the county in which the child resides, for an order providing for relief under subsection (3) of this section.

(2)(a) In any proceeding under this section, there is a presumption that the legal parent acts in the best interest of the child.

(b) In an order granting relief under this section, the court shall include findings of fact supporting the rebuttal of the presumption described in paragraph (a) of this subsection.

(c) The presumption described in paragraph (a) of this subsection does not apply in a proceeding to modify an order granting relief under this section.

(3)(a) If the court determines that a child-parent relationship exists and if the court determines that the presumption described in subsection (2)(a) of this section has been rebutted by a preponderance of the evidence, the court shall grant custody, guardianship, right of visitation or other right to the person having the child-parent relationship, if to do so is in the best interest of the child. The court may determine temporary custody of the child or temporary visitation rights under this paragraph pending a final order.

(b) If the court determines that an ongoing personal relationship exists and if the court determines that the presumption described in subsection (2)(a) of this section has been rebutted by clear and convincing evidence, the court shall grant visitation or contact rights to the person having the ongoing personal relationship, if to do so is in the best interest of the child. The court may order temporary visitation or contact rights under this paragraph pending a final order.

(4)(a) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award visitation or contact rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

(A) The petitioner or intervenor is or recently has been the child's primary caretaker;

(B) Circumstances detrimental to the child exist if relief is denied;

(C) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor;

(D) Granting relief would not substantially interfere with the custodial relationship; or

(E) The legal parent has unreasonably denied or limited contact between the child and the petitioner or intervenor.

(b) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award custody, guardianship or other rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

(A) The legal parent is unwilling or unable to care adequately for the child;

(B) The petitioner or intervenor is or recently has been the child's primary caretaker;

(C) Circumstances detrimental to the child exist if relief is denied;

(D) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor; or

(E) The legal parent has unreasonably denied or limited contact between the child and the petitioner or intervenor.

(5) In addition to the other rights granted under this section, a

stepparent with a child-parent relationship who is a party in a dissolution proceeding may petition the court having jurisdiction for custody or visitation under this section or may petition the court for the county in which the child resides for adoption of the child. The stepparent may also file for post-judgment modification of a judgment relating to child custody.

(6)(a) A motion for intervention filed under this section shall comply with ORCP 33 and state the grounds for relief under this section.

(b) Costs for the representation of an intervenor under this section may not be charged against funds appropriated for public defense services.

(7) In a proceeding under this section, the court may:

(a) Cause an investigation, examination or evaluation to be made under ORS 107.425 or may appoint an individual or a panel or may designate a program to assist the court in creating parenting plans or resolving disputes regarding parenting time and to assist the parties in creating and implementing parenting plans under ORS 107.425 (3).

(b) Assess against a party reasonable attorney fees and costs for the benefit of another party.

(8) When a petition or motion to intervene is filed under this section seeking guardianship or custody of a child who is a foreign national, the petitioner or intervenor shall serve a copy of the petition or motion on the consulate for the child's country.

(9) This section does not apply to proceedings under ORS chapter 419B.

(10) As used in this section:

(a) ""Child-parent relationship"" means a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessaries and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the nonrelated foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding 12 months.

(b)"Circumstances detrimental to the child" includes but is not limited to circumstances that may cause psychological, emotional or physical harm to a child.

(c)"Grandparent" means the legal parent of the child's legal parent.

(d)"Legal parent" means a parent as defined in ORS 419A.004 whose rights have not been terminated under ORS 419B.500 to 419B.524.

(e)"Ongoing personal relationship" means a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality.

FORMER ORS 109.119 (1997 Edition)

Rights of grandparent, person who establishes emotional ties creating child-parent relationship or person who has ongoing personal relationship; costs for intervenor representation.

(1) Any person, including but not limited to a related or nonrelated foster parent, stepparent or relative by blood or marriage who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child, or any legal grandparent may petition or file a motion for intervention with the court having jurisdiction over the custody, placement, guardianship or wardship of that child, or if no such proceedings are pending, may petition the court for the county in which the minor child resides for an order providing for relief under subsection (2) of this section.

(2) (a) If the court determines that a child-parent relationship exists and if the court determines by a preponderance of the evidence that custody, guardianship, right of visitation, or other generally recognized right of a parent or person in loco parentis, is appropriate in the case, the court shall grant such custody, guardianship, right of visitation or other right to the person, if to do so is in the best interest of the child. The court may determine temporary custody of the child or temporary visitation rights under this paragraph pending a final order.

(b) If the court determines that an ongoing personal relationship exists and if the court determines by clear and convincing evidence that visitation or contact rights are appropriate in the case, the court shall grant visitation or contact rights to the person having the ongoing personal relationship if to do so is in the best interest of the child. The court may order temporary visitation rights under this paragraph pending a final order.

(3) In addition to the rights granted under subsection (1) or

(2) of this section, a stepparent with a child-parent relationship who is a party in a dissolution proceeding may petition the court having jurisdiction for custody or visitation or may petition the court for the county in which the minor child resides for adoption of the child. The stepparent may also file for post decree modification of a decree relating to child custody.

(4) (a) A motion for intervention filed by a person other than a legal grandparent may be denied or a petition may be dismissed on the motion of any party or on the court's own motion if the petition does not state a prima facie case of emotional ties creating a child-parent relationship or ongoing personal relationship or does not allege facts that the intervention is in the best interest of the child.

(b) A motion for intervention filed by a legal grandparent may be granted upon a finding by clear and convincing evidence that the intervention is in the best interests of the child.

(5) As used in this section:

(a) "Child-parent relationship" means a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessaries and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship. Interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However,

a relationship between a child and a person who is the nonrelated foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding18 months.

(b) "Legal grandparent" means the legal parent of the child's legal parent.

(c) "Legal parent" means a parent as defined in ORS 419A.004 whose rights have not been terminated under ORS 419B.500 to 419B.524.

(d) "Ongoing personal relationship" means a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality.

(6) In no event shall costs for the representation of an intervenor under this section be charged against funds appropriated for indigent defense services.

(7) In a proceeding under this section, the court may assess against any party a reasonable attorney fee and costs for the benefit of any other party.